

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION No. 21383 of 2005****For Approval and Signature:****HONOURABLE MR.JUSTICE ANIL R. DAVE****HONOURABLE MS. JUSTICE R.M.DOSHIT**

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
 - 5 Whether it is to be circulated to the civil judge ?
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SABARMATI HARIJAN ASHRAM TRUST - Petitioner(s)**Versus****UNION OF INDIA & 4 - Respondent(s)****Appearance :**

MR SS BELSARE for Petitioner(s) : 1,
MR JITENDRA MALKAN for Respondent(s) : 1,
MR VM PANCHOLI, ASST. GOVERNMENT PLEADER for Respondent(s) : 2,
MR PRASHANT G DESAI for Respondent(s) : 3,
MR HA PATEL with MR SHITAL R PATEL for Respondent(s) : 4,

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CORAM : HONOURABLE MR.JUSTICE ANIL R. DAVE
and
HONOURABLE MS. JUSTICE R.M.DOSHIT

Date : 20/02/2006

ORAL JUDGMENT (Per : HONOURABLE MS. JUSTICE R.M.DOSHIT)

Heard the learned advocates.

2. This Special Civil Application has been preferred under Article 226 of the Constitution by the trustees of Sabarmati Harijan Ashram Trust (hereinafter referred to as '**the Trust**'). The subject-matter of this petition is a 24.38 metre T.P. Scheme Road passing through the lands of the Trust. Under the Town Planning Scheme No. 28 of Nava-Wadaj a 24.38 metre wide road has been proposed through the lands of the Trust. Against the original plot No. 707 admeasuring 57,000 and odd sq.mtrs., the Trust has been allotted Final Plot No. 706 admeasuring 56,000 and odd sq.mtrs. There are certain construction standing on the proposed T.P. Scheme road which are intended to be demolished. Feeling aggrieved by the imminent demolition of the standing construction, the Trust has preferred the present petition.

3. Mr. Belsare has submitted that the 12 rooms in question have a historical value as they were constructed

on the land of the Ashram during the times when Mahatma Gandhiji was residing in the said Ashram. Several activities of the Ashram were carried on in the said rooms. The said rooms have been declared a heritage property of India. The Town Planning Scheme, in so far as it envisages demolition of the said rooms and laying the T.P. Scheme road should, therefore, be declared as illegal, null and void. In support of this claim, Mr. Belsare has relied upon certain maps which indicate that the occupants of the said rooms were the tenants of the Trust even prior to 1947. Mr. Belsare has also relied upon long-drawn correspondence carried on with several authorities. He has candidly admitted that there were earlier litigations in respect of demolition of the said rooms. However, in his submission, in the earlier litigations the question of the rooms being a heritage property was not canvassed and not considered. Now that the petitioner has come out with a specific case that the said rooms are heritage property of India, this court should examine the matter afresh.

4. In support of his submissions Mr. Belsare has relied upon the judgments of the Hon'ble Supreme Court in the matters of ***Rajeev Mankotia v. Secretary to the President***

of India and others, [AIR 1997 SC 2766]; and of *Bhavnagar University v. Palitana Sugar Mill Pvt. Ltd. And others*, [AIR 2003 SC 511].

5. We are unable to agree with Mr. Belsare. It appears that the Town Planning Scheme No. 28 of Nava-Wadaj was finalised before some 20 years after following due procedure. When the Municipal Corporation started implementing the said scheme and wanted to remove the objectionable construction, the occupants of the rooms in question approached this court in Special Civil Application No. 2607/87. The said petition came to be dismissed on 20th April, 2000 (Coram: S.K. Keshote, J.). Letters Patent Appeal No. 886 of 2000 preferred against the said order came to be dismissed on 20th February, 2001 (Coram: J.N. Bhatt, J. as he then was & Y.B. Bhatt, J.). The learned Single Judge had noted **"I find that in lieu of the land of Gandhi Ashram/Harijan Ashram in T.P. Scheme, Final Plot No. 706 was given to Gandhi Ashram/Harijan Ashram."** The learned Judge further observed that **"None of the legal or fundamental right of the petitioners is being infringed. On the contrary, the petitioners are taking undue advantage of the situation."** The Division Bench also made observations against the

appellants-petitioners and dismissed the Appeal after imposing cost of Rs. 10,000/- on the appellants. Since then once again the occupants of the objectionable construction approached this court by Special Civil Application No. 2831 of 2003 which was withdrawn on 7th July, 2004. Even then the said occupants refused to vacate the objectionable construction, which led to another litigation being Special Civil Application No. 8513 of 2005 preferred by one Kshipdev Co-operative Housing Society Ltd. against inaction of the Municipal Corporation in implementing the Town Planning Scheme. The said petition came to be disposed of on 8th August, 2005 (Coram: D.N. Patel, J.). The learned Judge was pleased to direct the Corporation to remove the encroachment from the T.P. Scheme road between 16th October, 2005 and 28th October, 2005. Nevertheless, the Trust has preferred the present petition challenging the action of the Municipal Corporation in removing the objectionable construction.

6. Mr. Desai has relied upon one more order dated 30th September, 2005 made on Special Civil Application No. 14920 of 2003. In a complaint made to the High Court on its administrative side, this Court had registered a *suo*

motu writ petition with respect to the implementation of the aforesaid T.P. Scheme No. 28 more particularly laying of the 24.38 mtr. wide T.P. Scheme road. In the said petition the Trust also made a request to the court to get the scheme implemented. It was noted that, **"It is also pointed out by the Sabarmati Ashram Gaushala Trust that there is encroachment on the approach road to Final Plot Nos. 691, 710, 711, 715 and 716 and the Ahmedabad Municipal Corporation (AMC) is not removing the said encroachment."** Mr. Desai has also relied upon communications pp 85 and 87. He has submitted that as late as in June, 2005 the Trust had made earnest request to the Corporation to implement the T.P. Scheme and to remove the encroachment. Mr. Desai has submitted that the objectionable construction is an encroachment made by its occupants.

7. The abovereferred judgments relied upon by Mr. Belsare has no relevance to the facts of the present case. We may note that Mr. Belsare has failed to establish that the objectionable construction has been existing for several decades as alleged or that it is a construction of historical value or that it is a heritage monument. In view of the above-referred line of

litigations and the orders made thereon, there is no scope for this court to interfere and protract the implementation of the Town Planning Scheme which has been finalised for well over 20 years.

8. The petition is dismissed with cost to the respondent no. 3 Ahmedabad Municipal Corporation. Notice is discharged. Ad-interim order stands vacated. The cost is quantified at Rs. 10,000/-. The cost shall have to be borne by the individual trustees and will not be paid from the funds of the Trust. Rest of the respondents shall bear their own cost.

(Anil R. Dave, J.)

(Ms. R.M. Doshit, J.)

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